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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/702,037	10/27/2000	Peter Bennett Duff Whyte	U013032-6	8344
140 7590 07/28/2011 LADAS & PARRY LLP 1040 Avenue of the Americas NEW YORK, NY 10018-3738				
EXAMINER WARE, DEBORAH K				
ART UNIT 1651		PAPER NUMBER		
NOTIFICATION DATE 07/28/2011		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nyuspatactions@ladas.com  
nymail@ladas.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

09/702,037

**Applicant(s)**

WHYTE, PETER BENNETT DUFF

**Examiner**

DEBBIE K. WARE

**Art Unit**

1651

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 July 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
 NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: None.  
 Claim(s) objected to: None.  
 Claim(s) rejected: 28-39, 46 and 75.  
 Claim(s) withdrawn from consideration: None.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Deborah K. Ware/  
 Deborah K. Ware  
 Primary Examiner  
 Art Unit-1651

Continuation of 11, does NOT place the application in condition for allowance because: The correct citation of the applied prior art reference is indeed 282898. The argument that the steps used in the instantly claimed invention and those of the prior art are different is noted. However, the claim 28 is so broad as to encompass other steps and colostrum in the form of an eluate. There is no language used in the claims for which to distinctly claim any particular sequence of how steps are to be carried out, nor is there an omission of any particular step which can not be carried out. Note that other materials such as casein and whey proteins are included in a composition containing as well the IGF-1 after contact with the cation exchanger are disclosed by the reference. Thus, it is a colostrum composition which is subjected to ultrafiltration as disclosed by the reference to improve IGF-1 content and then is further subjected to ultrafiltration. Applicants' claimed method does not omit these steps and are broad enough to read on the method steps of the disclosed method for obtaining a composition comprising IGF-1. The disclosed composition before ultrafiltration contains casein and colostrum derived growth factors and after ultrafiltration further comprises IGF-1 in increased amounts. The instant claims provide no specific amount of IGF-1 for which to distinguish from the reference. Also, the reference after ultrafiltration will also result in obtaining an ultrafiltered colostrum retentate comprising colostrum derived growth factors and casein. Furthermore, the cited disclosure teaches that their resulting composition after ultrafiltration is subjected to spray drying. Ingestion of the disclosed composition is taught and will inherently result in an improvement of physical work capacity of a human subject because a high amount of bovine IGF-1 or colostrum derived growth factors has the same chemical structure as the human IGF-1 and is useful for bone reinforcement via increase of bone mass. The bones give the human body strength and hence to increase bone mass is equivalent to increasing the strength and physical work capacity of the human body. The stronger the body the more endurance and ability the body has to do exercise like walking. Physical work capacity can be measured by stature and bone mass clearly results in improved body mass and stature. The step of ingesting the composition is disclosed for at least 3 weeks. The reference teaches each element of the claimed method or they are believed to be inherent for the reasons discussed above and for those reasons of record.